IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7036 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESH & LALO SHANKARBHAI MALI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for the Petitioner.

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 21.6.2002. The petitioner is detained as a "dangerous person" under the provisions of the Prevention of Anti-social Activities Act, 1985 ("PASA", for short). In the grounds of detention, there is a reference to three criminal cases. The said three cases are registered against the petitioner at J.P. Road Police Station, under various

Sections of Indian Penal Code, such as Sections 143, 147, 435, 149, 436 and 427 of the Indian Penal Code, read with Section 135 of the Bombay Police Act. The incidents in question had taken place on 26.2.2002, 6.3.2002 and 23.3.2002. The detaining authority has also recorded statements of two witnesses to show that the petitioner is a "dangerous person" and his activities are against the public order.

At the time of hearing of this petition, it is argued by the learned Advocate for the petitioner that the last case, which is registered against the petitioner is dated 23.3.2002. However, there is a delay in passing the detention order, which is dated 21.6.2002. It is submitted that if the petitioner is a "dangerous person" and if his activities are required to be curbed immediately, it was not necessary to wait for such a long time, because, delay in passing the order defeats the entire object of passing detention order.

Learned AGP, however, submitted that, no doubt, it is true that the last registered case is in connection with the incident of 23rd March, 2002. However, subsequently, the detaining authority has recorded statements of witnesses, which is later in point of time. Such statements were recorded on 29.5.2002 and, subsequently, the order of detention is passed. However, in the decision in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, this Court has observed as under in paragraph 21 :-

> " ... ...
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> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered

> cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference maybe made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.
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> ... ..."

Considering the aforesaid aspect, in my view, when there is already a registered case against the petitioner, it was always open for the authorities to detain the petitioner in view of the criminal cases filed against the petitioner. In view of the above judgment of this Court, this petition is required to be allowed on the ground of delay in passing the order.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

5th February, 2003 (P.B. Majmudar, J.)

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(apj)